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June 21, 2019

## VIA EMAIL

### **RE: Freedom of Information Act Request**

This letter constitutes a request under the federal Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and is submitted on behalf of the Reporters Committee for Freedom of the Press (“Reporters Committee” or “RCFP”) to the Criminal Division of the Department of Justice (“DOJ”). The Reporters Committee is a nonprofit association dedicated to protecting First Amendment freedoms and the newsgathering rights of journalists.<sup>1</sup>

### **I. Background**

For nearly three decades, Bryan Carmody has worked in the Bay Area as a journalist and videographer.<sup>2</sup> On May 10, 2019, San Francisco police raided Mr. Carmody’s home and office, taking a sledgehammer to the gate of his house and seizing his computers, phones and other devices.<sup>3</sup> A spokesman for the San Francisco Police Department said that a search warrant was granted by a judge and executed as part of an inquiry into the release of the “Adachi police report.”<sup>4</sup>

<sup>1</sup> See generally [www.rcfp.org](http://www.rcfp.org).

<sup>2</sup> Amir Vera and Keith Allen, *San Francisco police seize equipment of freelance journalist who refused to identify a source* (June 11, 2019), <https://www.cnn.com/2019/05/14/media/california-journalist-equipment-seized/index.html>.

<sup>3</sup> Laurel Wamsley, *San Francisco Police Raid Journalist's Home After He Refuses To Name Source* (May 13, 2019), <https://www.npr.org/2019/05/13/722745266/san-francisco-police-raid-journalists-home-after-he-refuses-to-name-source>.

<sup>4</sup> *Id.*

The “Adachi police report” is the police report concerning the death of San Francisco public defender Jeff Adachi in February, who died at age 59.

Mr. Carmody has said that two inspectors with the San Francisco Police Department’s Internal Affairs Bureau initially asked for his source on the Adachi report in April 2019, but he declined to reveal the person’s name.<sup>5</sup> Mr. Carmody has further stated that during the May 2019 search of his home, two men who identified themselves as FBI agents tried to interview him, but he declined to speak with them and asked for a lawyer.<sup>6</sup>

Please note the additional background information which is provided to facilitate the location of records responsive to this request:

- In January 2015, the Attorney General issued an updated policy, codified at 28 C.F.R. 50.10, regarding obtaining information from and questioning members of the news media (the “News Media Policy”). The News Media Policy mandates robust review and evaluation by the DOJ Criminal Division of requests for authorization to use covered law enforcement tools to question and obtain information from members of the news media, and requires oversight by senior DOJ officials. Under the News Media Policy, Attorney General approval is required before members of the DOJ can question or execute a search warrant against a member of the news media based on conduct related to newsgathering activities, among other things.
- Section 9-13.400 of the United States Attorneys’ Manual and the News Media Policy require members of the DOJ to submit a memorandum to the Policy and Statutory Enforcement Unit (“PSEU”) describing the relevant facts and considerations required to determine whether the DOJ may obtain information from, or records of, members of the news media, question or arrest members of the news media, or execute a search warrant against members of the news media. Submission of this memorandum is part of the mandatory consultation requirement wherein the Attorney General can evaluate whether law enforcement tools may be used with respect to members of the news media.
- Additionally, § 9-13.400 of the United States Attorneys’ Manual states that when there is a question regarding whether an individual or entity is a member of the news media, “members of the Department must consult with the PSEU before employing the use of a covered law enforcement tool. Members of the Department must also consult with the PSEU regarding whether the conduct at issue of the affected member of the news media constitutes or relates to ‘newsgathering activities.’”
- The Privacy Protection Act (“PPA”), codified at 42 U.S.C. § 2000aa *et seq.*, protects journalists from the search or seizure by law enforcement of any work product and documentary materials before dissemination to the public.

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<sup>5</sup> Evan Sernoffsky, *SF police raid journalist’s home in probe over leaked Adachi report* (May 10, 2019), <https://www.sfchronicle.com/crime/article/SF-police-raid-journalist-s-home-in-probe-over-13837363.php?psid=4xXNM>.

<sup>6</sup> *Id.*

- The California Shield Law—found in California, Article I, § 2(b) of the California Constitution, California Evidence Code § 1070, and California Penal Code § 1524(g)—provides immunity from being held in contempt to reporters, editors, publishers, and other people connected with or employed by newspapers, magazines, press associations and wire services, as well as radio or TV news reporters. California Penal Code § 1524(g) states that no warrant shall issue for any item or items described in §1070 of the California Evidence Code. The California Shield Law applies to both the source of information (“confidential sources”) and to “unpublished information” such as notes, out-takes, unpublished photographs and tapes.

## **II. Requested Records**

Pursuant to the FOIA, I, on behalf of the Reporters Committee, request access to and copies of the following records:

1. All records mentioning or referring to Bryan Carmody. A signed DOJ-361 form from Mr. Carmody is attached hereto.
2. All records, including email correspondence, text messages, and other electronic messages, that include the term “Carmody” (case insensitive) and any of the following keywords (case insensitive):
  - a. Shield
  - b. Privacy Protection Act
  - c. PPA
  - d. Leak
  - e. Leaks
  - f. Subpoena
  - g. Newsgathering
  - h. Question
  - i. Questions
  - j. Questioning
  - k. Media
  - l. Warrant
  - m. Search
  - n. Seize
  - o. Seizure;
3. All communications, including email correspondence, text messages, and other electronic messages between any individual at the Department of Justice and
  - a. the San Francisco Police Department
  - b. the District Attorney’s Office for the City and County of San Francisco
  - c. the San Francisco Sheriff’s Department
  - d. the California Bureau of Investigation
  - e. the California Office of the Governor, and/or
  - f. the California Highway Patrolthat mention, refer to, or discuss Bryan Carmody;

4. All records mentioning, referring to, or constituting the memorandum sent from the United States Attorney's Office for the Northern District of California seeking approval for questioning, arresting, or charging Bryan Carmody.

Please note that email correspondence, as referred to in this request, includes the entire email chain in which the DOJ is a sender or recipient (including a "cc" or "bcc") of one or more emails in the chain. This request also includes any email attachments. This request also includes official communications sent or received using any non-governmental email account or other electronic messaging account.

### **III. Fees and Fee Categorization**

As a representative of the news media, the Reporters Committee is only required to pay for the direct cost of duplication after the first 100 pages. 5 U.S.C. § 552(a)(4)(A)(ii)(II). This information is being sought on behalf of the Reporters Committee for *inter alia*, analysis and free dissemination to the general public through multiple avenues, including RCFP's website,<sup>7</sup> social media accounts,<sup>8</sup> and email newsletter.<sup>9</sup>

In the event that there are duplication fees for responding to this request, the Reporters Committee is willing to pay up to \$50. Please let me know in advance if fees for responding to this request will exceed that amount before proceeding.

### **IV. Conclusion**

If this request is denied in whole or part, please justify all such denials by reference to specific exemptions and explain why DOJ "reasonably foresees that disclosure would harm an interest" protected by that exemption or why "disclosure is prohibited by law[.]" 5 U.S.C. § 552(a)(8). Please also ensure that all segregable portions of otherwise exempt material are released.

If you have any questions regarding this request, please feel free to contact me at (202) 795-9308. Thank you in advance for your assistance.

Sincerely,  
Adam A. Marshall  
Knight Foundation Litigation Attorney  
Reporters Committee for Freedom of the Press  
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<sup>7</sup> <https://www.rcfp.org/>.

<sup>8</sup> See, e.g., <https://twitter.com/rcfp> (~16.3 thousand followers as of May 14, 2019); <https://www.facebook.com/ReportersCommittee/> (8,148 "likes" as of May 14, 2019).

<sup>9</sup> <https://rcfp.us15.list-manage.com/subscribe?u=682100887bbcff066b451132&id=8f701b284f>.